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WRB-IP LLP  
801 N. Pitt Street  
Suite 123  
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EXAMINER
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CASS, JEAN PAUL

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LUC AIXALA, CHRISTOPHE LONG, and  
PHILIPPE LE BRUSQ

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Appeal 2015-000910  
Application 13/130,712  
Technology Center 3600

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Before LYNNE H. BROWNE, WILLIAM A. CAPP, and  
ERIC C. JESCHKE, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Luc Aixala et al. (Appellants) appeal under 35 U.S.C. § 134 from the rejection of claims 1–14. A hearing was held on April 19, 2017. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. Vehicle comprising an air compressor system having at least one compressor for supplying compressed air to an air

consuming circuit, wherein the vehicle comprises means for determining that the vehicle is coasting, wherein the compressor system is configured to be controlled so that the compressor delivers compressed air at a first power rate and at least at a second higher power rate, and the compressor system is configured to be controlled so that the compressor delivers compressed air at the second higher power rate when the determining means determines that the vehicle is coasting.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Graber	US 6,534,958 B1	Mar. 18, 2003
Severinsky	US 6,554,088 B2	Apr. 29, 2003
Chan	US 2004/0065676 A1	Apr. 8, 2004
Rush	US 2004/0173396 A1	Sept. 9, 2004
Duchet	US 2008/0030071 A1	Feb. 7, 2008
Bates	US 7,344,201 B1	Mar. 18, 2008
Sabelström	WO 98/07588	Feb. 26, 1998
Gustavsson	WO 98/17493	Apr. 30, 1998
Nakamura	WO 2006/040975 A1	Apr. 20, 2006
Louckes <sup>1</sup>	EP 1,932,704 A2	June 18, 2008

## REJECTIONS

- I. Claims 1 and 13 stand rejected under 35 U.S.C. § 102(b) as anticipated by Sabelström.<sup>2</sup>

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<sup>1</sup> We note that Severinsky is the first named inventor in this patent publication and Louckes is the second named inventor. It appears that the Examiner refers to the reference as Louckes to distinguish it from US 6,554,088 to Severinsky.

<sup>2</sup> This is a new ground of rejection set forth in the Answer.

- II. Claims 1, 2, and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström and Nakamura.<sup>3</sup>
- III. Claims 1, 2, 9, 10, and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Gustavsson, and Nakamura.<sup>4</sup>
- IV. Claim 3 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, and Bates.
- V. Claims 4, 5, and 7 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, and Rush.<sup>5</sup>
- VI. Claim 6 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, Rush, and Severinsky.
- VII. Claim 8 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, and Chan.
- VIII. Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, and Duchet.

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<sup>3</sup> Although the rejection of claims 2 and 3 is set forth separately from the rejection of claim 1 in the Final Action, these claims are rejected under the same ground of rejection (i.e., Sabelström and Nakamura). *See* Final Act. 3–13.

<sup>4</sup> Although the rejection of claims 9 and 10 is set forth separately from the second rejection of claims 1, 2, and 13 in the Final Action, these claims are subject to the same ground of rejection. *See* Final Act. 14–22, 33–41. Moreover, unlike the examiner, we do not consider the order in which prior art is applied in a rejection to be significant. *See, e.g., In re Bush*, 296 F.2d 491, 496 (CCPA 1961).

<sup>5</sup> Although the rejection of claim 7 is set forth separately from the rejection of claims 4 and 5 in the Final Action, these claims are subject to the same ground of rejection. *See* Final Act. 25–27, 29.

- IX. Claims 12 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström, Nakamura, and Louckes.<sup>6</sup>
- X. Claim 1 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sabelström and Graber.

## DISCUSSION

Independent claims 1 and 13 require an air compressor system “configured to be controlled so that the compressor delivers compressed air at a first power rate and at least at a second higher power rate.” Appeal Br. 17, 19. The Examiner finds that Sabelström discloses such a system. *See* Ans. 7. Specifically, the Examiner finds that Sabelström discloses a first power rate that is zero because the pump is off and a second higher power rate when the pump is on. *See id.* Appellants contend that Sabelström’s “compressor system is not controllable to deliver air at a first power rate or at a second power rate.” Appeal Br. 6 (emphasis omitted). In support of this contention, Appellants note that “[t]he system of [Sabelström] is only controllable to deliver air or to not deliver air, in an on/off manner.” *Id.* (emphasis omitted).

Appellants are correct. As discussed *supra*, claims 1 and 13 not only require first and second power rates, they require delivery of compressed air at those power rates. If the power rate is zero, then compressed air is not delivered. Accordingly, the claimed first power rate cannot fairly be read on Sabelström’s disclosure of a power rate of zero. Thus, the Examiner’s finding is in error.

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<sup>6</sup> Although the rejection of claim 14 is set forth separately from the rejection of claim 12 in the Final Action, these claims are subject to the same ground of rejection. *See* Final Act. 44–55.

All of the Examiner's rejections rely on the Examiner's finding that Sabelström discloses first and second power rates as claimed. *See* Final Act. 3–62; Ans. 19–22. Thus, our determination that this finding is in error is dispositive as to all claims and rejections involved in this appeal.

DECISION

The Examiner's rejections of claims 1–14 are REVERSED.

REVERSED